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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1973

No. 74-5218

PAUL O. CRUMP,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

JAMES J. DOHERTY
Public Defender of Cook County
407 Chicago Civic Center
Chicago, Illinois 60602
(312) 443-6350

By: **JAMES N. GRAMENOS**
Assistant Public Defender
407 Chicago Civic Center
Chicago, Illinois 60602
(312) 443-6350

Counsel for Petitioner

Midwest Law Printing Co., Chicago 60601, Financial 6-3988

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In The

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October Term, A.D., 1973

No.

PAUL O. CRUMP,

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vs.

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

(a)

REFERENCE TO REPORT OF OPINION

The opinion of the Illinois Appellate Court is attached as *Appendix A* and is reported as *People of the State of Illinois ex rel Paul O. Crump, Petitioner-Appellant vs.*

Elza Brantley, Warden of the Illinois State Penitentiary, et al., Respondent-Appellee, 17 Ill.App.3d 318, 307 N.E.2d 651 (January 21, 1974). A Petition for Leave to Appeal to the Illinois Supreme Court was denied on May 29, 1974. (A copy of the notification of denial is attached as *Appendix B.*)

(b)

STATEMENT OF JURISDICTIONAL GROUNDS

The judgment of the Illinois Appellate Court was entered on January 21, 1974. Thereafter, the Petition for Leave to Appeal was denied on May 29, 1974. Jurisdiction of this Court is invoked under Title 28 U.S.C., Sec. 1257 (3).

(c)

QUESTION PRESENTED FOR REVIEW

I.

In Light Of Furman v. Georgia, Which Would Have Applied To Petitioner's Death Sentence If The Governor Of Illinois Had Not Commutated It In The Year 1963, It Is Violative Of Due Process, Equal Protection, And The Eighth And Fourteenth Amendments, To Forever Preclude Petitioner From Parole Consideration And State Judicial Review Of His Complaints Of Prison Mistreatment.

(d)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 9, United States Constitution:

"The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

Eighth Amendment, United States Constitution:

". . . nor cruel and unusual punishments inflicted."

Fourteenth Amendment, United States Constitution:

"nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Illinois Revised Statutes, Unified Code of Corrections (Ill.Rev.Stat., 1972 Supp., ch. 38, par. 1003-1-1 et seq.) Specifically, paragraph 1003-3-3 of the Illinois Code which provides:

"(a) Every person serving a term of imprisonment . . . shall be eligible for parole when he has served:

(1) the minimum term of an indeterminate sentence less time credit for good behavior, or 20 years less time credit for good behavior, whichever is less; or

(2) 20 years of a life sentence less time credit for good behavior; or

(3) 20 years or one-third of a determinate sentence, whichever is less, less time credit for good behavior."

(e)

STATEMENT OF THE CASE

In 1953, Petitioner Paul Crump, age 23, was indicted for the crime of murder. Petitioner was tried twice. The first trial resulting in the imposition of the death penalty was reversed by the Supreme Court of Illinois. *People* v. *Crump*, 5 Ill. 2d 251 (1954). On retrial the death penalty was again imposed and the conviction affirmed. *People* v. *Crump*, 12 Ill. 2d 402 (1958). After exhaustion of state remedies, application was made to Governor Kerner for executive clemency.

During 1963, extensive hearings were held on that application, centering upon the claim that petitioner had undergone substantial rehabilitation while awaiting execution. Predicated upon the outcome of these hearings the Governor determined that Petitioner was then a different person psychologically from the individual who had been sentenced to death. (Record-Excerpts) (E. 114)

Then Governor Kerner found that during the period between sentencing and proposed execution petitioner had achieved an unusual degree of introspection and that, "[t]he degree of introspection and maturity of values he had received and of the genuine contribution he has made . . . warranted the necessity that he be accepted as rehabilitated." The Governor concluded: "[U]nder these circumstances it would serve no useful purpose to take this man's life." (E. 114). Governor Kerner accordingly on August 1, 1963, commuted this sentence from death to imprisonment for a term of "199 years, without parole." (E. 114).

In 1965 Petitioner's case was considered by the parole board pursuant to the applicable statutory provisions and parole was denied. (E. 120, 122). In 1970, the Illinois Attorney General advised the parole board that Petitioner's case should not again be considered. (E. 128) The State Attorney General ruled that the stipulation "without parole" contained within the Governor's commutation precluded such consideration, so that Petitioner would necessarily be required to spend the rest of his natural life in confinement.

On November 11, 1971, Petitioner filed a *pro se* petition for a Writ of *Habeas Corpus* with the Clerk of the Circuit Court of Cook County, Illinois together with an Affidavit of Indigency and a request for the appointment of Counsel. (E. 3) The petition alleged facts which *if proven* would entitle the Petitioner to relief. On January 12, 1972, the State's Attorney of Cook County filed a motion to dismiss the petition without a hearing. (E. 12). On March 29, 1972, Petitioner, through his court-appointed counsel, filed an amended petition for Writ of *Habeas Corpus*. (E. 23) On May 10, 1972, the State's Attorney, joined by the Illinois Attorney General, filed a Motion to Dismiss. (E. 43).

Another parole hearing was scheduled by the Illinois Parole Board for 1972 but was canceled after the Illinois Attorney General issued his advisory ruling. The Petitioner's request for judicial relief was filed and denied without an evidentiary hearing. After arguments on the motions, the Presiding Judge of the Criminal Division, Joseph Power, dismissed the petition for a Writ of *Habeas Corpus* (E. 63-100).

The Petitioner appealed to the Illinois Appellate Court from the dismissal of the petition for a writ of habeas corpus. In the appeal we urged that the transfer of the Petitioner to the Psychiatric Division of the Penitentiary and the mistreatment by prison officials should allow for a hearing before a judicial officer based on the facts shown in the petition. (Opinion) (Appendix A, 2) The State failed to answer the allegations raised in the defendant's petition before the trial court.

The Illinois Appellate Court was asked by this Petitioner to overturn the ruling by the Illinois Attorney General that this Petitioner be barred from further consideration for parole merely because the death sentence when commuted by Governor Kerner in the year 1963 contained this provision.

The Illinois Appellate Court affirmed the actions of the trial judge in dismissing the petition for habeas corpas without an evidentiary hearing thereby precluding state judicial review of this man's request for relief for mistreatment by persons in the State correction system. (Opinion-*Appendix A.*, pp. 652, 654) In addition the Illinois Appellate Court refused to consider the issue contesting the Illinois Attorney General's advisory ruling which the Illinois Parole Board accepted in canceling a scheduled parole hearing in the year 1972 thereby precluding Petitioner from parole consideration. (Opinion-*Appendix A.*, pp. 652, 654)

We urge that this Court grant this Petition for Certiorari recognizing that barring the Petitioner from ever being considered for parole and judicial relief from mistreatment by state correctional system employees is vio-

lative of the Petitioner's Eighth and Fourteenth Amendment rights to be free from cruel and unusual punishment, equal protection of the laws, and due process of law. The Petitioner requests an order mandating the State of Illinois to provide judicial relief from the violations of his constitutional rights to be free from cruel and unusual punishment.

(f)

RAISING OF THE FEDERAL QUESTION

The trial judge was asked by this Petitioner to allow a hearing to provide an opportunity to show that he was being mistreated by employees of the State of Illinois correctional system. In addition the Petitioner asked the trial judge to overturn the ruling of the State Attorney General that this Petition be forever barred from being considered for parole.

The trial court denied the petition for habeas corpus without an evidentiary hearing. The case was appealed directly to the Illinois Appellate Court and the above two issues were squarely raised. (Opinion-*Appendix A.*, p. 652) The Illinois Appellate Court denied relief. The Illinois Supreme Court denied a Petition for Leave to Appeal without opinion. (*Appendix B.*)

(g)

PROCEEDINGS IN FEDERAL COURTS

(None)

(h)

REASONS FOR ALLOWING THE WRIT

I.

In Light Of Furman v. Georgia, Which Would Have Applied To Petitioner's Death Sentence If The Governor Of Illinois Had Not Commutated It In The Year 1963, It Is Violative Of Due Process, Equal Protection, And The Eighth And Fourteenth Amendments, To Forever Preclude Petitioner From Parole Consideration And State Judicial Review Of His Complaints Of Prison Mistreatment.

The Attorney General of the State of Illinois gave the Illinois Parole Board an advisory ruling that Petitioner should be barred from consideration for parole because the terms under which his death sentence had been commuted in the year 1963 provided for no parole. (*Appendix A.*, p. 652) Although a parole hearing was scheduled by the Parole Board in the year 1972, it was canceled after the State Attorney General issued this advisory ruling. (*Appendix A.*, p. 652)

The Petitioner sought judicial relief by filing a Petition for a Writ of Habeas Corpus alleging not only mistreatment by employees of the State Correctional system but a denial of fundamental rights. The Petitioner's writ urging judicial relief from the actions of the State Attorney General in advising the Illinois Parole Board to cancel the Petitioner's scheduled parole hearing, and the subsequent cancellation because of the Attorney General's advice, was denied by the Illinois Appellate Court. (*Appendix A*) The Illinois Supreme Court refused to hear the case by way of Petition for Leave to Appeal from the lower court's opinion. (*Appendix B*)

A challenge to prison administration on constitutional grounds generally requires a writ of habeas corpus. The right of a prisoner to apply for such a writ has been guaranteed by Article I, Section 9, of the United States Constitution. This Court has held that such a writ shall not be arbitrarily denied. *Johnson* v. *Avery*, 393 U.S. 483 (1969). In *Jordan* v. *Fitzharris*, 257 F. Supp. 674 (N.D.Cal. 1966) a prisoner's application to the Supreme Court of California for a writ of habeas corpus prompted that court, through the judiciary, to make an inquiry into certain questionable practices of the prison system which the inmate had complained of. As a result of this inquiry, the court ordered the prison officials to produce all relevant documents and memoranda bearing on the treatment within the disciplinary unit. During the course of this investigation the prison made certain radical changes and revisions in its system of treatment and produced a memorandum for the attention of the judiciary. *Jordan* v. *Fitzharris*, *supra*, 257 F. Supp. at 681.

For the Illinois prison administration to follow the Attorney General's advisory opinion and not consider this Petitioner for parole at any time, is not only degrading to the Petitioner but to the prison administration as well. The subsequent opinion by the Illinois Appellate Court can only frustrate the correctional and rehabilitative goals of the prison administration and make the prisoner's adjustment to prison living more difficult. The judiciary in Illinois did nothing to assist this man in overcoming the oppression and persecution he has experienced in the prison system.

Weems v. *United States*, 217 U.S. 349 (1910) was a landmark case in the definition of the Cruel and Unusual

Punishment Clause. *Robinson* v. *California,* 370 U.S. 669 (1962) made the Eighth Amendment binding on the States through the Fourteenth Amendment. This Court said in *Trop* v. *Dulles,* 356 U.S. 86 (1958) that the "dignity of man" was the overriding value preserved by that clause.

Life is taken away in the criminal process, not only by capital punishment, but also by the negation of human freedom and dignity. The fact that we in this country do not exact capital punishment for all crimes indicates, quite obviously, that we do not intend to extend the negation to the point of physical death, nor to the point of psychological death. Many deaths occur in jails and prisons annually, often as suicides. Clark, *Crime in America,* pp. 298-299 (1970). These occurrences cannot simply be passed off as results of a defective person rather than a defective system. For this Petitioner, by the very nature of his petition for habeas corpus relief, the facts warranted an evidentiary hearing to show the repeated instances of mistreatment by state employees in the prison system. Since it is the state courts who consign persons to prisons they should also assume primary responsibility for the consequences of such confinement.

The trial court's ruling, in accordance with the argument of the State Attorney General that the Petitioner shall be forever precluded from parole consideration, must also be considered in light of the other allegations contained in the petition for a writ of habeas corpus. Such consideration is necessary in order to completely understand the circumstances confronting the Petitioner, and upon which he predicates his prayer for judicial relief. For his complaints, of cruel and unusual punishment, cannot be divorced from the denial forever of parole eligibility.

The fitness of punishment is to be judged by applying evolving standards, for the cruel and unusual punishment clause "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." *Weems* v. *United States*, *supra*, 217 U.S. at 378.

Governor Kerner found in the year 1963 that the Petitioner was substantially rehabilitated, and that under such ". . . circumstances, it would serve no useful purpose to society to take this man's life." (E. 114). Had the Governor's commutation been predicated solely upon a disavowal of capital punishment, it might logically be assumed that he did intend to deny forever parole eligibility to the Petitioner. But no such assumption can be made. In fact, the Governor, in commuting the Petitioner's sentence specifically stated that his personal opposition to the death penalty, ". . . will not predominate my actions in a request for commutation in a capital case." (E. 114). The Petitioner was commuted because he was rehabilitated, not because the Governor found any inherent vice in the death penalty.

The Petitioner also urged a judicial hearing on his basic complaints of mistreatment. However, no hearing was granted. This Court has held that the extent to which the prohibition against cruel and unusual punishment will apply in prison must be determined when in *Haines* v. *Kerner*, 404 U.S. 519 (1972) this Court held that a bare allegation of onerous penal conditions is sufficient to require a hearing. Given the total hopelessness of the Petitioner, and the indifference of the penal authorities faced with a prisoner who can never get out anyway, it was almost inevitable that improper conditions and treat-

ment would result which for practical purposes would insure the end, if not retrogression of past rehabilitative efforts.

The Petitioner has no further incentive to rehabilitate himself: such efforts cannot move him closer to freedom. And the prison personnel have no reason to attempt further rehabilitation. The Petitioner's confinement is very literally that of an animal in a zoo, rather than that of a human being seeking to be reclaimed.

The Petitioner's allegations filed in the State courts were:

> (1) He is confined in a cell of inadequate size, in jeopardy to both his physical and mental health. (E. 23).
>
> (2) He was placed in the Psychiatric Division of the Illinois State Penitentiary without any semblance of a hearing on the necessity or propriety of such confinement. (E. 23).
>
> (3) He is continually sedated through the administration of drugs against his will for disciplinary rather than medical reasons. (E. 23).
>
> (4) His creative writings—the very means through which he first demonstrated his rehabilitation—are suppressed and confiscated. (E. 23).

All of these things are wrong in themselves, and constitute cruel and unusual punishment; *Eighth Amendment* to the United States Constitution; *Weems* v. *United States,* 217 U.S. 349 (1910); *Trop* v. *Dulles,* 356 U.S. 86 (1959); *Jackson* v. *Bishop,* 404 F. 2d 571 (8th Cir. 1968); *Sostre* v. *McGinnis,* 442 F. 2d 178 (2d Cir. 1972); *Holt* v. *Sarver,* 309 F. Supp. 362 (E.D. Ark. 1970); *Cof-*

fin v. *Reichard,* 143 F. 2d 443 (6th Cir. 1943). Arguably, they reflect an even greater wrong, and a more crying need for judicial intervention than the prospective denial of parole.

This Petitioner requested the state judiciary to allow him to ascertain what rights he as a man retains now that he is incarcerated. By the ruling, the Illinois Appellate Court ignores the Petitioner's request in establishing relief from Constitutional violations. The rules and regulations for his life and Constitutional rights are left to the prison administrators and not to the judiciary. Since the Petitioner's complaints concern the administration of the prison system, and the State Attorney General's advisory opinion as followed by the Parole Board, therein lies the crux of the problem. By a clear and reasonable definition of the extent of a prisoner's rights, it is for the judiciary to frame and enforce the content of these Constitutional rights and not leave the resolution of these basic rights up to prison administrators.

Coffin v. *Reichard, supra,* 143 F. 2d at 445 states that a prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, are taken away from him by law. Reasonable minds may differ over what rights of this Petitioner are by implication being taken away when the prison employees deprived Petitioner of his creative writings which were confiscated. (E. 23) In *Davis* v. *Superior Court,* 175 Cal. App. 2d 8, 345 P.2d 513 (Dist. Ct. App.-1959) the case concerned a book written by Caryl Chessman while a prisoner. The state prison warden had forbidden writing manuscripts for publication, and the court responded to this prohibition with the following statement (Id. at 520).

> Neither statute nor constitution supports the prosecution's theory that the state acquires the ownership of an incarcerated person's creativity or individuality; there are limits to the state's powers even in this specific circumstance. An odor of totalitarianism infects the concept that any product of the prisoner's mind automatically becomes the property of the state. While a free society recognizes the social need for incarceration of offenders, it claims no possession of their minds. We want no easy or invious adoption of techniques for state domination of an individual's identity, even if he is imprisoned and even if the immediate purpose of a particular prison regulation may be understandable.

A general statement in *Jackson* v. *Bishop,* 404 F. 2d 571 (8th Cir. 1968) reflects current judicial thinking with reference to a prisoner's constitutional guarantees, showing that a prisoner in a state does not lose all of his civil rights during and because of his incarceration. In particular, a prisoner continues to be protected by the due process and equal protection clause which follow him through the prison doors. In *Jackson* v. *Bishop, supra,* the Court related that the Eighth Amendment guarantee against the infliction of cruel and unusual punishment seems now to have come to be regarded as directly applicable to the states through the due process clause of the Fourteenth Amendment. (Id. at 576)

In *Weems* v. *United States,* 217 U.S. 349 (1910) the Court analyzed the problem of cruel and unusual punishment in this manner:

> Time works changes, brings into existence new conditions and purposes. Therefore a principal to be vital must be capable of wider application than the mischief which gave it birth. This is peculiarly true

> of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it." The future is their care and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been but of what may be . . . .

Indeed, in applying the constitutional prohibition against cruel and unusual punishment such contemplation as to "what may be" is inevitable. A modern decision which seems to signal this revolutionary approach is this Court's decision in *Trop* v. *Dulles*, 356 U.S. 86 (1956). Despite the factual distinction between the form of punishment as found in *Trop* and the conditions prevalent to this Petitioner in a penal setting, if the same effects result in the total destruction of this Petitioner's status as a human being, subjecting him to a fate of ever-increasing fear and distress, should not the rationale of *Trop* be equally applicable? We feel the Illinois Appellate Court opinion sidestepping responsibility for any issue wherein the Appellate Court feels mandamus against a parole board is an available remedy, knowing a review of mandamus action would not lie within the jurisdiction of the Illinois Appellate Court, denies to this defendant review of actions which are violative of the Eighth Amendment and the purposes of incarceration.

The Illinois legislature has expressly commanded that: "Every person serving a term of imprisonment for a felony . . . shall be eligible for parole when he has served . . . 20 years . . . less time credit for good behavior." *Ill. Rev. Stat.*, 1973, Ch. 38, §1003-3-3. The cited statute clear-

ly means that while in many situations convicted felons are eligible for parole well in advance of 20 years; in any event service of 20 years is the absolute maximum which can be required as a condition of parole consideration. This Illinois law applies to all prisoners who were sentenced to a term of years after this Court's decision in *Furman* v. *Georgia,* 408 U.S. 238 (1972), including the subjects involved in the cases of *Witherspoon* v. *Illinois,* 391 U.S. 510 (1968) pre-dating *Furman* and *Speck* v. *Illinois,* 403 U.S. 946 (1971) post-dating *Furman.* Only this Petitioner is being treated differently.

That Petitioner meets the statutory requirement is undisputed; in fact, his case was actually considered by the Parole Board on two occasions prior to the instant contested ruling of the Attorney General (E. 120, 122) and was rescheduled for a third. (E. 128).

But now the Petitioner is denied parole consideration only because in the Attorney General's view, the phrasing of the Governor's commutation—from death to imprisonment for a term of "199 years, without parole"—precludes all possibility of parole consideration at present, or ever again. This view is the subject-matter of the Petitioner's state litigation.

We submit that this determination is both erroneous and unreasonable for the following reasons:

a) The State Attorney General's interpretation would result in the imposition upon Petitioner of a sentence unauthorized by Illinois law;

b) The Attorney General's interpretation would deny the Petitioner the equal protection of the laws and due process of laws;

c) The Attorney General's interpretation is unreasonable, given the statutory objective of rehabilitation and parole and in light of the terms of the Governor's commutation.

At the time of the commutation in 1963 there was every reason to believe that the sentence of death imposed upon the Petitioner was an authorized sentence which could be carried out with constitutional propriety. Subsequent events, however, have demonstrated that this sentence was unlawful and could not lawfully be carried into effect. *Furman* v. *Georgia,* 408 U.S. 238 (1972). Therefore, the chastisement experienced by the Petitioner, without judicial relief, goes beyond what is necessary to achieve legitimate penal aims.

The power of the Governor of Illinois to commute a death sentence would not allow him to disregard the doctrines of equal protection and due process of law. But that is exactly what the Illinois Attorney General has held when he interpreted the Governor's commutation of "199 years, without parole" to forever preclude Petitioner from being considered eligible for parole. For the Attorney General argues that:

(a) Even though the Illinois Legislature has since 1963 provided that *all* persons incarcerated in Illinois penal facilities are eligible for parole after 20 years less time off for good behavior (*Ill. Rev. Stat.* 1973, Ch. 38, §1003-3-3), the Governor could, by commutation, deprive this Petitioner of that which the Illinois Legislature says he, as all other prisoners, must have.

(b) The Governor, in commuting the sentence of this Petitioner could carve out a separate class of one in which, though every other prisoner outside that

class is entitled to parole consideration, the one member of the class, Paul Crump, is not.

Either of these two arguments necessarily invites a violation of the principle of a denial of equal protection and due process of law. (Race): *Loving* v. *Virginia,* 388 U.S. 1 (1967) (National origin): *Korematsu* v. *United States,* 323 U.S. 214 (1944); (Alienage): *Takahashi* v. *Fish and Game Commission,* 334 U.S. 410 (1948); (Poverty): *Douglas* v. *California,* 372 U.S. 353 (1963); *Williams* v. *Illinois,* 399 U.S. 235 (1970); (Misdemeanor-felony distinction): *Groppi* v. *Wisconsin,* 400 U.S. 505 (1971); (Trial by jury): *Duncan* v. *Louisiana,* 301 U.S. 445 (1968); (Right to counsel based on felony misdemeanor distinction): *Argersinger* v. *Hamlin,* 407 U.S. 25 (1972); (Sex): *Reed* v. *Reed,* 404 U.S. 71 (1971). For these reasons both of the arguments must, of necessity, fail.

Yet in the proceedings before the lower court, the State adopted the position that the statutory scheme, judicial philosophy, and constitutional mandate, should apply to every one but the Petitioner, and that the Governor's commutation should be interpreted so as to render the Petitioner singularly ineligible for parole.

In that challenged application the public policy would emerge in a wildly whimsical application. All persons other than the Petitioner, whose death sentences have been modified in accordance with presently existing Constitutional doctrine have or will become eligible for parole under *Ill. Rev. Stat.* 1973, Ch. 38, §1003-3. That section, if the Attorney General's interpretation is adopted, is thus applicable to every prisoner in the State of Illinois

with the sole exception of the Petitioner, and the exception carved out is predicated upon an interpretation which flies in the face of every legislative and judicial expression which has ever dealt with this subject in a similar context. *People ex rel. James Weaver* v. *Joseph Longo, et al.*, 57 Ill. 2d 67, 309 N.E. 2d 581 (1974).

In exercising his power to commute, the Governor of Illinois could hardly be imagined to have been unaware of the legislative and judicial policy to which we have above referred. An examination of the Governor's own words lends further credence to the Petitioner's position.

As reported in the American Bar Journal for all lawyers to read,

> We take on a burden when we put a man behind walls, and that burden is to give him a chance to change. If we deny him that, we deny his status as a human being, and to deny that is to diminish our own humanity and plant the seeds of future anguish for ourselves. Burger, *No Man Is An Island,* 56 A.B.A.J. 325, 328 (1970).

The same principles apply to the Petitioner; the state judiciary should provide an opportunity for a hearing to preserve and protect the integrity of the Petitioner's Constitutional rights. Anything less will merely allow our prisons to be productive of little more than human suffering and recidivist criminal behavior. Legislative reforms may be the ideal means of dealing with such problems, but legislatures are slow to act and the need for action based on Constitutional foundations is immediate. If the judiciary in Illinois does not keep watch over the Constitutional rights of prisoners, who will?

CONCLUSION

The Petitioner respectfully prays that this Petition for a Writ of Certiorari be granted to allow for a review of the Constitutional issues which we feel should allow for a reversal of the Illinois Appellate Court action in denying this Petitioner a hearing concerning prison mistreatment and judicial relief from the actions of state officials in denying him consideration and an opportunity for parole as enjoyed by every other prisoner.

Respectfully submitted,

JAMES J. DOHERTY
Public Defender of Cook County
407 Chicago Civic Center
Chicago, Illinois 60602
(312) 443-6350

By: **JAMES N. GRAMENOS**
Assistant Public Defender
407 Chicago Civic Center
Chicago, Illinois 60602
(312) 443-6350

Counsel for Petitioner

August 23, 1974

APPENDIX A

PEOPLE EX REL. CRUMP v. BRANTLEY

Cite as 307 N.E.2d 651

17 Ill.App.3d 318

PEOPLE of the State of Illinois ex rel. Paul O. CRUMP, Petitioner-Appellant,

v.

Elza BRANTLEY, Warden of the Illinois State Penitentiary at Menard et al., Respondent-Appellee.

No. 57813.

Appellate Court of Illinois, First District, First Division.

Jan. 21, 1974.

The Circuit Court of Cook County, Joseph A. Power, J., dismissed prisoner's petition for habeas corpus, and prisoner appealed. The Appellate Court, Hallett, J., held that neither parole board's refusal to consider prisoner's parole nor transfer of prisoner to psychiatric division of penitentiary and other alleged mistreatment by prison officials was a proper subject for habeas corpus petition.

Affirmed.

1. Habeas Corpus ⇐29

Habeas corpus is properly employed only where it can be shown that the original proceeding or judgment of conviction is void, or where something has happened since rendition of the judgment to entitle prisoner to outright release.

2. Mandamus ⇐73(1)

Mandamus is the appropriate remedy to compel the parole board to grant a prisoner a hearing to determine his eligibility for parole.

3. Habeas Corpus ⇐25.2(4)

Parole board's refusal, by reason of terms under which prisoner's death sentence had been commuted, to consider prisoner's parole was not a proper subject for habeas corpus petition.

4. Habeas Corpus ⇐25.2(3)

Habeas corpus is not a proper vehicle by which court can determine whether prisoner is being mistreated by prison system administration.

5. Habeas Corpus ⇐3, 25.2(2)

Habeas corpus was not a proper remedy with respect to transfer of prisoner to psychiatric division of penitentiary or other alleged mistreatment by prison officials and, even if it were, prisoner would be obliged to first employ and exhaust administrative remedies. Ill.Rev.Stat.1969, ch. 108, §§ 10 et seq., 106, 109, 111, 112.01 et seq.

James J. Doherty, Public Defender of Cook County, Chicago (Richard Kling, Robert Gray, Asst. Public Defenders, of counsel), for petitioner appellant.

Bernard Carey, State's Atty., County of Cook, Chicago (Kenneth L. Gillis, Jerald A. Kessler, Asst. State's Attys., of counsel), for respondent appellee.

HALLETT, Justice.

The petitioner appeals to this court from the dismissal of his petition for a writ of habeas corpus. By that petition he sought to overturn a ruling by the Attorney General of the State of Illinois that he was barred from consideration for parole because of the terms under which his death sentence had been commuted by the Governor of this State. He also sought immediate release as a means of relief from alleged mistreatment by the administrators of the State correctional system. The petitioner was originally convicted of murder, and sentenced to death. The conviction and sentence were reversed by the Illinois Supreme Court, People v. Crump (1955), 5 Ill.2d 251, 125 N.E.2d 615. A second conviction and the same sentence were imposed on the petitioner upon retrial, and this was affirmed by the Illinois Supreme Court, People v. Crump (1958), 12 Ill.2d 402, 147 N.E.2d 76. While awaiting execution, the death sentence was commuted by the Governor on August 1, 1963, to 199 years, without parole. In spite of the wording of the commutation order, the petitioner was considered for parole in 1965 and again in 1969. Another hearing was scheduled by the Parole Board for 1972, but was canceled after the Attorney General issued his said advisory ruling. Thereafter the instant petition was filed, heard and denied.

This appeal raises two issues: 1) whether the refusal further to consider parole is the proper subject matter for a petition for a writ of habeas corpus, and 2) whether the transfer of the petitioner to the Psychiatric Division of the Illinois State Penitentiary and other alleged mistreatment by prison officials can properly be raised in a habeas corpus petition.

[1, 2] With respect to the first issue, it has long been established in this State that habeas corpus is properly employed only where it can be shown that the original proceeding or judgment of conviction is void, or where something has happened since the rendition of the judgment to entitle the prisoner to his outright release. See People ex rel. Totten v. Frye (1968), 39 Ill.2d 549, 237 N.E.2d 709; and People ex rel. Skinner v. Randolph (1966), 35 Ill. 2d 589, 221 N.E.2d 279. A writ of mandamus is considered the appropriate remedy to compel the Parole Board to grant a prisoner a hearing to determine his eligibility for parole. People ex rel. Abner v. Kinney (1964), 30 Ill.2d 201, 195 N.E.2d 651. This problem was carefully considered by our Supreme Court in the case of People ex rel. Castle v. Spivey (1957), 10 Ill.2d 586, at 594–595, 141 N.E.2d 321, at 325, where the court said:

"Parole is a matter of grace and not of legal right. A convict cannot invoke

it at his own will and has no right to demand that he be discharged before the expiration of the maximum term of his sentence. People v. Nowak, 387 Ill. 11, 55 N.E.2d 63, 152 A.L.R. 1101; People v. Thompson, 381 Ill. 71, 44 N.E.2d 876; People v. Connors, 291 Ill. 614, 126 N.E. 595. The Parole Act (Ill.Rev.Stat.1955, chap. 38, par. 801 et seq.) does not by its provisions violate any right of a citizen guaranteed by the Federal or State constitutions. People v. Rohde, 403 Ill. 41, 85 N.E.2d 24; People v. Roche, 389 Ill. 361, 59 N.E.2d 866; People v. Mikula, 357 Ill. 481, 192 N.E. 546; People v. Connors, 291 Ill. 614, 126 N.E. 595. Neither prisoner had the legal right to release prior to the expiration of his full term of life imprisonment. The court could not legally discharge them prior thereto upon the mere showing that they had not been admitted to parole, or because the court might feel that denial of parole was unreasonable, or that the period of years served was sufficient to satisfy the ends of justice. A court has no jurisdiction in a *habeas corpus* proceeding to enter an order for a prisoner's release because of equitable considerations and no right to exercise clemency through its own processes. People ex rel. Barrett v. Crowe, 387 Ill. 53, 55 N.E.2d 84. The exercise of clemency is an executive, not a judicial function."

[3] We therefore hold that the Board's refusal again to consider the petitioner's parole is not a proper subject for a petition for a writ of habeas corpus.

[4] With respect to the second point raised by this appeal, a petition for a writ of habeas corpus is likewise not a proper vehicle by which this court or the court below can determine whether or not the petitioner is being mistreated by the prison system administration. Since the implementation of the new Illinois State Penitentiary Act, (Ill.Rev.Stat.1969, ch. 108) and the implementation of new Administrative Regulations by the Department of Corrections, our Supreme Court has considered whether or not a protest of transfer to the Psychiatric Division is the proper subject matter for a writ of habeas corpus and has held that it is not. In People ex rel. Willis v. Dept. of Corrections (1972), 51 Ill.2d 382, at pages 383–384, 385, 387–388, 282 N.E.2d 716, at page 717, the court said that

"He [the petitioner] contends that his confinement at Menard is tantamount to being detained 'in a mental institution' and constitutes cruel and unusual punishment in violation of the eighth amendment to the Federal constitution and a deprivation of liberty without due process. He also contends that he was afforded inadequate assistance of counsel with regard to the *habeas corpus* proceeding. The State's contentions are that the transfer of an inmate to the psychiatric division of the Illinois State Penitentiary is an administrative determination and may be done without a full hearing, and that *habeas corpus* is not an appropriate proceeding for the review of such an action.

"The Illinois State Penitentiary Act modernized and streamlined the penitentiary system and consolidated all institutions for the incarceration of convicts under the administration of the Department of Corrections, subject to certain exceptions which are not pertinent here. The institution previously known as the Illinois Asylum for Insane Criminals became known as the psychiatric division. (Ill.Rev.Stat.1969, ch. 108, par. 106.) Diagnostic Depots were established under section 5 of the Act. (Ill.Rev.Stat. 1969, ch. 108, par. 109.) At such depots, the prisoner is examined to determine the appropriate division of the penitentiary system to which he should be confined, including the psychiatric division. The prisoner is to be held at the assigned division 'until discharged according to law, or until assigned by the Department to some other division of the system.'

"Section 6 of the Act (Ill.Rev.Stat. 1969, ch. 108, par 110), subject to the other provisions of the Act, gives to the Department of Corrections 'full power to transfer prisoners from one division to another as often as the nature of the individual case or the exigencies of administration may require.'

* * * * * *

"The State points out that the Department of Corrections is charged with the care of the prisoners and the determination of whether any prisoner is suffering from 'mental, intellectual, emotional, character, or personality disorder,' such that he should be confined within the psychiatric division, is an administrative decision that must be made by the Department without cumbersome time-and-expense-consuming procedures. There is obvious common sense support for this conclusion. There also is legal precedent. See: Pigg v. Patterson (10th Cir. 1966), 370 F.2d 101, and United States ex rel. Gapinski v. Ragan (7th Cir. 1945), 152 F.2d 268.

"The Illinois statutes suggest varying procedures in connection with the transfer of an inmate within the penitentiary system. Section 7 of the Illinois State Penitentiary Act provides that an inmate may be transferred within the penitentiary system to a psychiatric division without a hearing. Section 8.01 *et seq.* of the Act (Ill.Rev.Stat.1969, ch. 108, par. 112 01 *et seq.*) permit the transfer of an inmate from the penitentiary system to the custody of the Department of Mental Health. If the prisoner does not object, he may be so transferred without a hearing, for a period of not more than six months. If he objects, or if the treatment will require transfer of more than six months, a full hearing in the circuit court is required in conformity with the provisions of the Mental Health Code of 1967.

* * * * * *

"Likewise, since this case was taken under advisement, the Department of Corrections of the State of Illinois has adopted new Administrative Regulations. Section 801 thereof outlines the Reception and Diagnostic Center Functions and provides for the assignment of in-

mates to a regular Adult Division institution, facility, or program within 30 days after his or her admission by the Administrator of the Office of Program Services. Section 819 provides for Institutional Transfers, permits any inmate to request an institutional transfer, and empowers the institutional staff to recommend such transfer at any time. The section, however, makes no provision for a review of the decision of the Administrator of the Office of Program Services upon a denial of the request.

* * * * * * *

"In view of the new Administrative Regulations which have been adopted by the Department, we believe that the appropriate procedure is to withhold judicial action pending an opportunity for petitioner to make a request for transfer pursuant to section 819 thereof, and for the expeditious consideration of that request by Department officials. The comprehensive administrative program which has been undertaken by the Department must have a reasonable opportunity to evolve procedures which will meet the needs of the prison system and the requirements of due process of law. Some provision for adequate internal review of the denial of a request for transfer must be made available."

[5] See also In re Petition of Owen (1973), 54 Ill.2d 104, 110, 295 N.E.2d 455, where this position is reaffirmed. The decision reached by our Supreme Court in these two cases controls our decision here. We therefore conclude that habeas corpus is not a proper remedy and that, even if it were, the petitioner must first employ and exhaust the administrative remedies which have been afforded him. His second contention is therefore without merit.

It should be noted that nothing in this opinion precludes the petitioner from filing a petition for a writ of mandamus against the Parole Board to compel it again to consider whether he should be paroled. When the correct form of petition has been filed and the necessary defendants are before the court, a trial court can then decide that question.

The petition was properly dismissed.

Judgment affirmed.

BURKE and GOLDBERG, JJ., concur.

APPENDIX B

STATE OF ILLINOIS

OFFICE OF

CLERK OF THE SUPREME COURT

SPRINGFIELD

62706

JUSTIN TAFT
CLERK

May 29, 1974

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AREA CODE 217
525-2021

Hon. James J. Doherty
Cook County Public Defender
407 Chicago Civic Center
Chicago, Illinois 60602

No. 46586 - People ex rel. Paul O. Crump, petitioner, vs. Elza Brantley, Warden, etc., et al., respondents. Leave to appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

Clerk of the Supreme Court